

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

38th Report of Session 2021–22

**What next? The
Growing Imbalance
between Parliament
and the Executive:
End of Session
Report 2021–22**

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 13 May 2021, are set out on the website but are, broadly:

To report on draft instruments published under paragraph 14 of Schedule 8 to the European Union (Withdrawal) Act 2018; to report on draft instruments and memoranda laid before Parliament under sections 8 and 23(1) of the European Union (Withdrawal) Act 2018 and section 31 of the European Union (Future Relationship) Act 2020.

And, to scrutinise –

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord De Mauley](#)

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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Philipp Mende (Adviser), Jane White (Adviser) and Emily Pughe (Committee Operations Officer).

Further Information

Further information about the Committee is available at <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/>

The progress of statutory instruments can be followed at <https://statutoryinstruments.parliament.uk/>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

EXECUTIVE SUMMARY

This report provides an overview of our work in session 2021–22. During the height of the pandemic, departments had to meet the challenge of producing large numbers of coronavirus-related statutory instruments to very tight timetables and under difficult working conditions. We recognise these pressures and acknowledge the work and achievements of the officials who had to respond to the exceptional demands of the pandemic. However, as the pressures of the pandemic eased off—this year we considered 126 statutory instruments (SIs) related to COVID-19, a reduction of two-thirds on the last session—we would have expected departments to return to normal legislative practices and diligence when preparing secondary legislation.

We were therefore disappointed with the quality of some of the secondary legislation and supporting material laid in this session. We were also concerned about the Government using practices which curtailed Parliament’s ability to provide effective scrutiny as part of the legislative process. These are concerns which we considered in more depth in our report *Government by Diktat*, and which we expect to look into further in the forthcoming session.

This report identifies examples of poor quality and legislative practices from this session and highlights some areas for improvement, in particular on:

- Restricting parliamentary scrutiny (paragraphs 7 to 24);
- Failing to provide information on impact (paragraphs 25 to 34);
- Inadequate consultation (paragraphs 35 to 37);
- Poor quality explanation (paragraphs 38 to 43);
- The availability and appropriate use of guidance (paragraphs 44 to 47); and
- Corrections (paragraphs 60 to 64).

In addition to our reports to the House under our terms of reference, we also provide information paragraphs on instruments which we consider are likely to be of particular interest to Parliament and these have prompted, on a number of occasions, debates in the House (paragraphs 52 to 53).

We welcome submissions with real life experience of organisations or individuals who may be affected by particular regulations. Where possible, we publish these submissions as part of our weekly report (paragraphs 65 to 66).

Effective parliamentary scrutiny will be of particular importance in the context of the so-called Brexit Freedoms Bill, which, according to the Government, will “make it easier to amend or remove outdated retained EU law” and will “accompany a major cross-government drive to reform, repeal and replace outdated EU law”. Given the volume of retained EU law, it is important that Parliament’s role in scrutinising legislation—especially as regards secondary

legislation—should not be in any way weakened by the Government’s ambitions for reform in this area.

Our supporting team

Finally, we would like to thank the team who support the work of the Committee: Philipp Mende and Jane White, the Committee Advisers, Emily Pughe, Committee Operations Officer, and our Clerk, Christine Salmon Percival. We would also add Lara Orija, Media and Communications Officer, who joins us at every meeting. As this report demonstrates, the workload of the Committee is challenging in the range and complexity of policy areas considered and the number of instruments that come before us. Our scrutiny work requires the team supporting us to have extraordinary flexibility and resilience, exceptional attention to detail, and a keen instinct for identifying, amongst the morass of instruments and documentation, which instruments are of significance, the issues they raise and the questions that need to be asked. Their sustained hard and skilful work is critical to the ability of the Committee and of the House to perform their fundamental role in holding the Government to account by effective scrutiny of secondary legislation. We owe them a debt of gratitude.

Thirty Eighth Report

END OF SESSION REPORT 2021–22

Introduction

1. The Secondary Legislation Scrutiny Committee (SLSC) considers all secondary legislation that is subject to a parliamentary procedure and advises the House of any concerns through weekly reports. This report provides an overview of the Committee’s work in session 2021–22: Part 1 highlights the key themes and concerns that arose during the session (paragraphs 7 to 47) and Part 2 provides a statistical overview (paragraphs 48 to 68).
2. Session 2021–22, which started in May 2021 and lasted for 12 months, saw a reduction in the volume of secondary legislation dealing with the coronavirus pandemic, with a total of 126 statutory instruments (SIs), down from 379 in the longer 2019–21 session which lasted 16 months. While the number of coronavirus instruments may have fallen, those considered included several significant policy measures, such as legislation to require those working in the NHS or social care to be vaccinated against COVID-19. The overall number of instruments we scrutinised also fell to 666, from 1,227 in session 2019–21.
3. Whilst the principal focus of our work is on the scrutiny of the several hundreds of instruments laid before Parliament each session, from time to time we undertake thematic inquiries on issues relating to secondary legislation more generally. In session 2021–22, working in close collaboration with the Delegated Powers and Regulatory Reform Committee (DPRRC), we considered the fundamental issue of the relationship between Parliament and the executive. Both Committees concluded that the delegation of power to the executive had gone too far, and that there was an urgent need for the balance of power between Parliament and the executive to be re-set.
4. In November 2021, we published our thematic report, entitled *Government by Diktat: A call to return power to Parliament*,¹ published in parallel with DPRRC’s report *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*.² In our report, we joined forces with the DPRRC in asserting: the critical importance of the appropriate balance between primary and secondary legislation as the foundation of the relationship between Parliament and the executive; the need to place the principles of parliamentary democracy (namely, parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament) at the centre of ministerial decisions about the delegation of legislative powers in primary legislation; the need for restrictions on the use of skeleton bills and clauses, and for any legislative sub-delegation of power in secondary legislation to be fully explained in the Explanatory Memorandum (EM) accompanying an instrument containing the power.

1 SLSC, [Government by Diktat: A call to return power to Parliament](#) (20th Report, Session 2021–22, HL Paper 105).

2 Delegated Powers and Regulatory Reform Committee, [Democracy Denied? The urgent need to rebalance power between Parliament and the Executive](#) (12th Report, Session 2021–22, HL Paper 106).

5. We also made recommendations and observations about issues of specific concern to the SLSC. These included issues relating to: the proper use of secondary legislation and guidance, the blurring of boundaries between the two, inconsistencies between secondary legislation and its related guidance, and the use of guidance to fill gaps in legislation; the provision of Impact Assessments (IAs) or, where not formally required, of material in the EM accompanying an instrument to enable the effect of the instrument to be understood; the use of sunset provisions; and, effective parliamentary scrutiny of secondary legislation, breaches of the 21-day rule and the use of made affirmative instruments.
6. On 6 January 2022, Baroness Cavendish of Little Venice initiated a debate in the House of Lords on the use of skeleton bills and delegated powers. Issues raised by the reports of the SLSC and the DPRRC were central to the debate. The Government response was less supportive. The Government responded to our report on 24 January 2022,³ and disappointingly almost all recommendations were rejected. But, despite this or because of it, our commitment to pursuing these matters remains undaunted and, continuing our collaborative approach with the DPRRC, we anticipate undertaking further work in the forthcoming session including discussion with interested Members of the House of Commons.

³ Lord President of the Council and Leader of the House of Commons, *Government response to the Secondary Legislation Scrutiny Committee's Twentieth Report of the Session 2021–22 'Government by Diktat: A Call to Return Power to Parliament'* (24 January 2022): <https://committees.parliament.uk/publications/8704/documents/88287/default/> [accessed 26 April 2022].

PART 1: KEY THEMES AND CONCERNS DURING SESSION 2021–22

Restricting parliamentary scrutiny

7. During the pandemic, pre-emptive and immediate action was often necessary to deal with developments at speed. It was, therefore, understandable that emergency legislative procedures had to be used. However, as the need to take emergency action receded, we continued to see legislative practices that, in our view, restricted the ability of Parliament to scrutinise secondary legislation effectively. These included:
- Instruments being brought into effect immediately or almost immediately without due cause.
 - Making permanent certain changes, without adequate explanation, which were introduced on a temporary basis under the pretext of an emergency.
 - Failing to take into account concerns raised by the House.
 - Failing to send instruments to the SLSC for scrutiny.
 - A legislative backlog at the Department for Transport.
 - A loss of parliamentary oversight.
- Instruments being brought into effect immediately or almost immediately without due cause*
8. A significant proportion of pandemic-related instruments continued to be brought into immediate effect during session 2021–22 even though most pandemic restrictions had been lifted. Of 86 instruments with “coronavirus” in their title:
- 13 (15%) came into effect before being laid (and one came partially into effect).
 - 22 (26%) came fully into effect and nine (11%) came partially into effect within 48 hours of being laid (down from 35% and up from 5.2% respectively in session 2019–21).
 - 19 (22%) were made affirmatives⁴ and came into effect at short notice and before having been debated and approved by Parliament.
9. Convention requires departments to allow at least 21 days between a negative instrument being laid before Parliament and its coming into force. The purpose of this “21-day rule” is not only to allow time for parliamentary scrutiny before an instrument comes into effect but also to enable operational

⁴ Made affirmatives are SIs that are made into law (signed by the minister) before Parliament has considered them, but that cannot remain law unless they are approved by Parliament within a certain time period (usually 28 or 40 sitting days). Made affirmatives are typically used when the Government require an urgent change to the law.

staff and the public to react to and prepare for changes in the law.⁵ The 21-day rule should be set aside only for compelling reasons.⁶ However, in this session, several instruments were brought into effect immediately without a satisfactory explanation of why this was necessary.

10. In March 2022, for example, we held an oral evidence session with Baroness Stedman-Scott, Parliamentary Under Secretary of State at the Department for Work and Pensions (DWP), about a set of regulations which reduced the period during which claimants were permitted to limit their job search to the same occupation and level of remuneration as their previous role.⁷ The regulations, the Universal Credit and Jobseekers' Allowance (Work Search and Work Availability Requirements—limitations) (Amendment) Regulations 2022 (SI 2022/108), were laid on 7 February 2022 and came into force the next day. The Minister was unable to explain what adverse effect would have occurred if the regulations had been brought into effect in accordance with the 21-day rule. We concluded that the claimed “urgency” was self-imposed and that there had been no compelling reason for curtailing parliamentary scrutiny.
11. We also criticised the Ministry of Justice for laying a set of regulations, the Coronavirus Act 2020 (Delay in Expiry: Inquests, Courts and Tribunals, and Statutory Sick Pay) (England and Wales and Northern Ireland) Regulations 2022 (SI 2022/362), on 23 March 2022 and bringing them into force the next day which extended by six months certain temporary provisions in the Coronavirus Act 2020. It was not clear to us why the regulations were brought into force overnight when the date on which the Coronavirus Act 2020 would expire had been known well in advance.⁸
12. Bringing legislation into effect with such urgency should only happen in circumstances where it is justified on the ground of an emergency—such as the prevention of the spread of infection or imposing sanctions. Reasons of political expediency or to remedy poor planning are not good enough. **We therefore expect that, now that the pandemic restrictions have been lifted, departments will only breach the 21-day rule in the most exceptional of circumstances and, on each occasion, will offer a clear explanation of, and justification for, their action.**

Making permanent certain changes, without adequate explanation, which were introduced on a temporary basis under the pretext of an emergency

13. While measures taken in response to the pandemic may well have been justifiable in the short-term and on the ground of an emergency, we expressed criticism when certain temporary measures were subsequently made permanent simply by further order. Our concern was that this would allow significant changes to the law to be made without the robust parliamentary scrutiny afforded by primary legislation. Sometimes these changes sought to make newly-realised benefits permanent: the draft Competition Appeal

5 According to the Joint Committee on Statutory Instruments (JCSI), the 21-day rule “is designed to protect those affected by changes in the law made by subordinate legislation from being subject to the effect of the changes before they have had a reasonable opportunity to understand the effects and what they must do to satisfy any requirements”. See JCSI, *Transparency and Accountability in Subordinate Legislation*, para 2.18 (First Report, Session 2017–19, HC Paper 1158, HL Paper 151).

6 Ibid. See para 2.20, where the JCSI sets out a non-exhaustive list of examples which would not generally be regarded as justification for breach of the 21-day rule.

7 SLSC, [33rd Report](#) (Session 2021–22, HL Paper 176).

8 SLSC, [36th Report](#) (Session 2021–22, HL Paper 193).

Tribunal (Recording and Broadcasting) Order 2022, for example, made permanent the disapplication of statutory prohibitions on recording and broadcasting court proceedings, after the Ministry of Justice (MoJ) had found that the temporary disapplication had proved effective during the pandemic, particularly for the management of large hearings, and had attracted large numbers of observers for some cases.⁹ Similarly, the MoJ laid the Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2022 (SI 2022/ 295) to make permanent temporary provisions which had allowed civil wedding and civil partnership ceremonies to take place outdoors during the pandemic, in response to popular support for outdoor ceremonies.¹⁰

14. In other cases, however, we raised concerns about such an approach. For example, the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021 (SI 2021/1464)¹¹ made permanent several time-limited permitted development rights that had been introduced to support cafes, pubs and other businesses during the pandemic. We considered that this meant that local residents who may have concerns about a development, such as a marquee providing additional space in a pub garden, would no longer be able to raise their concerns through the local planning process. We took the view that permanent and potentially impactful changes were being made to local planning law under the pretext of the pandemic under circumstances which could hardly have been anticipated when the original primary planning legislation was passed. **This is an ongoing concern which we first raised in session 2019–21.**¹²
15. **We regret that once again the Government used secondary legislation to make permanent certain changes under the pretext of the emergency of the pandemic. Where such changes have a potentially significant impact on businesses or members of the general public, it would be more appropriate to achieve permanency by way of primary legislation, thereby providing the opportunity for robust parliamentary scrutiny.**

Failing to take into account concerns raised by the House

16. The draft Motor Vehicles (Driving Licences) (Amendment) (No. 5) Regulations 2021 (“the No. 5 Regulations”) removed the obligation for car and van drivers towing a trailer to take an additional test. They replaced an earlier set of regulations (“the No. 2 Regulations”) which had to be re-laid due to a procedural error. In our report on the No. 5 Regulations,¹³ we expressed disappointment that the safety concerns about a potential increase in towing accidents which we had raised in our report on the No. 2 Regulations and which the House had followed up in debate,¹⁴ were not addressed in the Explanatory Memorandum (EM) accompanying the No. 5 Regulations. We wrote to the Minister, Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport (DfT), to ask about the reason for this omission. The Minister’s response neither reduced our concerns about these safety issues nor reassured us that

9 SLSC, [25th Report](#) (Session 2019–21, HL Paper 137).

10 SLSC, [35th Report](#) (Session 2021–22, HL Paper 187).

11 SLSC, [26th Report](#) (Session 2021–22, HL Paper 146).

12 See, for example; SLSC, [52nd Report](#) (Session 2019–21, HL 268) and SLSC, [25th Report](#) (Session 2019–21, HL Paper 123).

13 SLSC, [23rd Report](#) (Session 2021–22, HL Paper 123).

14 HL Debs, 9 November 2021, [cols 484–496](#) [Lords Chamber Grand Committee].

the Department had understood the critical importance of evidence-based policy or the respect that should be accorded to Parliament. (We later held an oral evidence session with the Minister (see paragraph 28 below)). The Minister wrote to us again in April 2022 to inform us that an IA had been published for these Regulations, nearly four months after they had taken effect.¹⁵

17. **When preparing an EM, departments should ensure that, where appropriate, it includes an explanation of how concerns that may have been previously raised in Parliament about a policy have been addressed or taken into account.**

Failure to send instruments to the SLSC for scrutiny

18. On several occasions in this session, departments failed to send instruments to the Committee for scrutiny. The Department for Digital, Culture, Media and Sport (DCMS), for example, twice failed to send us Codes of Practice on data sharing. Although not statutory instruments, they were instruments subject to a form of negative procedure, and therefore within our remit. This was a significant oversight.
19. Similarly, the Department for Levelling Up, Housing and Communities (DLUHC) failed to send to us a Private Parking Code of Practice in February 2022, and DfT only realised in April 2022, more than a year later, that it had failed to lay an instrument before Parliament which had come into force in February 2021.¹⁶
20. **We have reminded departments that our remit includes all instruments subject to a parliamentary procedure, not just statutory instruments. We expect departmental Senior Responsible Owners of secondary legislation to ensure that we receive all instruments subject to parliamentary procedure.**

Legislative backlog at the Department for Transport

21. A continuing issue that has been a feature of session 2021–22 has been the legislative backlog at DfT. During the session, we drew attention to delays, sometimes of decades, in implementing a backlog of international maritime legislation which DfT had instead been addressing through guidance and Marine Shipping Notices rather than legislation. When we also came across an air safety measure which addressed the recommendations of the Air Accident Investigation Board's investigation into the Vauxhall helicopter crash¹⁷ some seven years after the event, we asked the Minister, Robert Courts MP, Parliamentary Under Secretary of State for Aviation, Maritime, Security and Civil Contingencies, to give oral evidence in October 2021. We welcomed the candid admission of the Minister that DfT, particularly in the maritime sector, had got it wrong, in some cases failing to transpose international legislation more than 20 years old. Following a full audit of outstanding legislation, there is now a clear plan for remedying the deficiencies by 2023.¹⁸ Mr Courts recently wrote to the Committee to confirm that by

15 SLSC, [37th Report](#) (Session 2021–22, HL Paper 197).

16 High Speed Rail (West Midlands – Crewe) (Qualifying Authorities) Regulations 2021 ([SI 2021/151](#)). See SLSC, [37th Report](#) (Session 2021–22, HL Paper 197).

17 Air Navigation (Amendment) Order 2021 ([SI 2021/879](#)). See: SLSC, [12th Report](#) (Session 2021–22, HL Paper 63).

18 SLSC, [17th Report](#) (Session 2021–22, HL Paper 88).

April 2022, DfT had implemented six of the 29 delayed instruments and several more were at the point of laying. **We welcome DfT’s actions to rectify the situation. We invite the Government to tell us whether other departments have similar backlogs.**

Loss of parliamentary oversight

22. During session 2021–22, we raised concerns about a loss of parliamentary oversight in the case of the draft Organics (Equivalence and Control Bodies Listing) (Amendment) Regulations 2021. These regulations replaced a legislative mechanism, which required a statutory instrument to update lists of recognised third countries and bodies, with an administrative mechanism, which allows the Department for Environment, Food and Rural Affairs (Defra) to update the lists without any parliamentary oversight.¹⁹ Defra argued that changes to these lists were “uncontroversial administrative changes” which did not require significant parliamentary scrutiny. We took the view, however, that amendment by statutory instrument was an appropriate and frequently used vehicle for minor changes, such as updates to lists of recognised countries or bodies, and that parliamentary scrutiny of such changes was desirable. We also disagreed with Defra’s view that the Secretary of State’s general accountability to Parliament and the publication of any changes to the lists were a suitable replacement for direct parliamentary scrutiny.
23. In contrast, we found that the replacement of a legislative process with an administrative one to be more appropriate in the case of the draft Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022²⁰ which empowered the Government to change certain conditions for the import of animals and animal products from non-EU countries without parliamentary oversight. The new administrative process will be similar to that applied by the European Commission and also mirrors the process that already exists in Great Britain for imports from the EU.
24. **Departments should consider very carefully whether to propose replacing legislative processes with administrative ones. Parliament may well wish to have oversight of changes even though they may be thought by departments to be minor or technical.**

Failing to provide information on impact

25. In this session, a number of significant instruments were laid which were not only without an Impact Assessment (IA) but where it was evident that the policy had been formulated without adequate analysis of the potential impact. In July 2021, for example, we took evidence from the Rt Hon. Nadhim Zahawi MP, then Minister for COVID Vaccine Deployment at the Department of Health and Social Care (DHSC), on the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, which made it mandatory for anyone working in a care home to be fully vaccinated against coronavirus.²¹ Submissions we received from care providers made it clear that there was deep concern in the sector about the potential side effects of the regulations on staffing. Without an IA, we were unclear about the justification for some of the policy choices

19 SLSC, [11th Report](#) (Session 2021–22, HL Paper 52).

20 SLSC, [37th Report](#) (Session 2021–22, HL Paper 197).

21 [Draft Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021](#). See SLSC, [10th Report](#) (Session 2021–22, HL Paper 50).

underlying the Regulations, including the basis on which DHSC had struck a balance between public health benefits, other care issues, the wider costs to society and the impact on the rights of individuals. The final version of the IA was not published until November 2021.

26. We were particularly disappointed that, a few months later, when DHSC extended the requirement for mandatory COVID-19 vaccination to anyone working in the NHS who would have direct contact with a service user, the legislation once again lacked an IA²² (albeit, on this occasion, we were aware that an IA had been submitted for independent validation to the Regulatory Policy Committee (RPC)). The RPC rated several sections of the IA as unfit for purpose, including the section dealing with wider consequences. We also found the EM to be inadequate because, although it repeatedly asserted that there was a strong case for making vaccination mandatory, DHSC had failed to provide an evidence-based argument and any coherent statement to explain and justify its intended policy.
27. A proper IA follows a standardised methodology and is externally validated by the RPC so that the accuracy and comprehensiveness is assured. In relation to vaccinations for care home staff, DHSC did provide—but only the day before the instrument was debated in the House of Lords—an Impact Statement, a document of the Department’s own devising, with some rudimentary information. Also, in November 2021, in relation to vaccinations for all NHS staff, the Secretary of State, the Rt Hon. Sajid Javid MP, offered, in the absence of an IA, to give oral evidence to the Committee on DHSC’s approach, which we did not take up. **In our view, clear and comprehensive explanatory material including accurate information on the costs and benefits of the change, should be laid at the same time as the instrument, so that it is available to all interested parties both inside and outside Parliament.**
28. In January 2022, we took evidence from Baroness Vere of Norbiton and questioned her about the lack of an IA for the No. 5 Regulations (see paragraph 16 above) concerning the removal of the obligation for car and van drivers towing a trailer to take an additional test.²³ We had been told, when the No. 2 Regulations were laid, that the risk assessment on the safety of the change would be included in an IA. Ten weeks after the evidence session and six months after the No. 2 Regulations were laid, Baroness Vere wrote to the Committee to apologise that the IA had still not been published. We finally received a letter from the Minister in April 2022 informing us that the IA had now been published, nearly four months after the Regulations had taken effect.²⁴
29. We also criticised DLUHC for failing to complete an IA for the draft Private Parking Code of Practice²⁵ by the time the draft Code was laid, and similarly expressed concerns that Defra had not laid an IA for the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 (SI 2021/548),²⁶ because at that time the RPC had not yet validated

22 [Draft Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) \(No. 2\) Regulations 2021](#). See SLSC, [21st Report](#) (Session 2021–22, HL Paper 109).

23 [Motor Vehicles \(Driving Licences\) \(Amendment\) \(No. 5\) Regulations 2021](#). See SLSC, [23rd Report](#) (Session 2021–22, HL Paper 123).

24 SLSC, [37th Report](#) (Session 2021–22, HL Paper 197).

25 SLSC, [32nd Report](#) (Session 2021–22, HL Paper 171).

26 SLSC, [2nd Report](#) (Session 2021–22, HL Paper 7).

the IA. We took the view that this was an internal planning matter for the Department and not an acceptable excuse for failing to present all the necessary documentation to Parliament in time for it to inform the scrutiny process.

30. In contrast, although prior to validation by the RPC, the Foreign, Commonwealth and Development Office (FCDO) published a well-developed draft IA alongside regulations which imposed sanctions on Russian financial instruments from 1 March 2022. Although this was emergency legislation which was brought into immediate effect, the draft IA provided helpful information to Parliament about the limited impact of the sanctions on UK businesses.²⁷
31. We reiterated our expectations regarding IAs in our report *Government by Diktat*—namely, where a formal IA is required, it should be laid at the same time as the instrument—in part to demonstrate that the policy was evidence-based; and where the impact of the legislation is likely to fall below the £5 million threshold or only affect the public sector (and so does not require an IA), some basic information about the financial impact and other consequences should be included in the EM.
32. The need for this was illustrated by our report on the Education (Student Loans) (Repayment) (Amendment) Regulations 2022 (SI 2022/301) which maintained current repayment thresholds for student loans.²⁸ While the Department for Education said that this would result in savings of £3.7 billion for the Government, it failed to explain that these savings would be funded by increased payments of up to £9.45 per month or £113.40 per year for up to one million borrowers of student loans.
33. **We are concerned that a failure to provide IAs when they were required was a frequent occurrence and affected several departments during the session: each instance undermined the ability of Parliament to scrutinise the legislation effectively and also had the potential to cast doubt over the robustness of the policy development process. We call on the Government to ensure that the timely production of IAs is made a priority and part of the oversight exercised by departmental Senior Responsible Owners and Lead Ministers for secondary legislation.**
34. Given the importance of meaningful impact information for parliamentary scrutiny, we are taking evidence on the availability and quality of impact information.²⁹ We are particularly interested in how this may be affected by policy decisions following the Government’s review of the Better Regulation Framework.³⁰ We will report our findings and conclusions in the forthcoming session.

Inadequate consultation

35. Meaningful consultation is a key element of transparent and effective policy design. While we commend that for certain pandemic-related regulations

27 [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 2\) Regulations 2022 \(SI 2022/194\)](#). See SLSC, [31st Report](#) (Session 2021–22, HL Paper 165).

28 SLSC, [36th Report](#) (Session 2021–22, HL Paper 193).

29 See Corrected oral evidence: Quality of impact assessments, [5 April 2022](#) and [22 March 2022](#).

30 Department for Business, Energy and Industrial Strategy, ‘Reforming the framework for better regulation’: <https://www.gov.uk/government/consultations/reforming-the-framework-for-better-regulation> [accessed 26 April 2022].

departments sought the views of at least a sample of affected groups despite curtailed deadlines,³¹ at times departments were less compliant with the spirit of the consultation principles.³²

36. We saw legislation being taken forward where local consultation had been carried out, but it was unclear whether the feedback received was then used to inform the final policy decision. For example, we noted that while DLUHC said that unitarisation should always be “locally led” and “command a good deal of local support”, the EM to the regulations introducing unitarisation in Cumbria, the draft Cumbria (Structural Changes) Order 2022, however, made it clear that the only proposal to have received support from a majority of local respondents during consultation was not implemented. DLUHC explained that more than one proposal for unitarisation had enjoyed a degree of local support and that there were a number of criteria that had to be met. We were not clear, however, on what basis the chosen option for unitarisation was permitted to go ahead when the feedback received suggested that the chosen option did not enjoy widespread support from local residents.³³ Concerns about the consultation and geographic choice were highlighted in the debate in the House of Lords about the regulations.³⁴
37. **Departments need to ensure that the EM accompanying an instrument sets out clearly how feedback received during consultation has been taken into account and, in particular, how possible objections or concerns have been addressed.**

Poor quality explanation

38. We continued to see examples of poorly drafted EMs throughout the session. We drew ten SIs to the attention of the House on the ground that the explanatory material laid in support provided insufficient information to gain a clear understanding about the instruments’ policy objective and intended implementation. We also asked for a number of EMs to be revised to include additional information for the benefit of all readers.
39. In two of our reports, we complained that information about relevant court cases had not been included in the EM. For example, the SI allowing the continued use of Napier Barracks in Kent for asylum applicants,³⁵ neglected to mention that a recent High Court judgement against the Home Office had found that the standards and operational systems at Napier Barracks had been unlawful. Similarly, our report on the SI regulating the release of gamebirds into protected areas³⁶ commented that, while the EM had referred to judicial review proceedings, it had not provided any detail of how the instrument addressed the issues raised.

31 See, for example, the draft [Airports Slot Allocation \(Alleviation of Usage Requirements\) \(No. 2\) Regulations 2021](#), the Private Storage Aid for Pigmeat (England) (Amendment) Regulations 2022 ([SI 2022/21](#)) and the [Protection of Animals at the Time of Killing \(Amendment\) \(England\) Regulations 2022 \(SI 2022/33\)](#).

32 These principles include that consultations are only part of a process of engagement and should last for a proportionate amount of time; be targeted; take account of the groups being consulted; and facilitate scrutiny. See: Cabinet Office, ‘Consultation principles: guidance’: <https://www.gov.uk/government/publications/consultation-principles-guidance> [accessed 27 April 2022].

33 SLSC, [9th Report](#) (Session 2021–22, HL Paper 156).

34 HL Deb, 9 March 2022, [cols 497GC-513GC](#) (Lord Chamber).

35 Town and Country Planning (Napier Barracks) Special Development Order 2021 ([SI 2021/962](#)). See: SLSC, [13th Report](#) (Session 2021–22, HL Paper 70).

36 Wildlife and Countryside Act 1981 (Variation of Schedule 9, Part 1) (England) Order 2021 ([SI 2021/236](#)). See: SLSC, [2nd Report](#) (Session 2021–22, HL Paper 7).

40. **Where secondary legislation is intended to address issues arising from a court judgment, this should be explained in the EM.**
41. During session 2021–22, we also criticised a number of EMs for requiring the reader to refer to other documents to understand the policy change and its implications. For example, to gain an understanding of the issues involved in the mandatory vaccination of NHS staff,³⁷ we had to consult a range of other documents, including an Impact Statement, the Government’s consultation document and their response, the Equality Impact Assessment and several guidance documents. Similarly, we found that, while the EM accompanying the Building Regulations etc. (Amendment) (England) Regulations 2021 (SI 2021/1391)³⁸ set out briefly how the instrument fitted into the staged improvement of building standards and provided links to further material, it assumed an extensive understanding of the policy area, requiring us to obtain substantial additional information from DLUHC to understand the changes.
42. We also asked for the EMs of several instruments to be replaced because they did not provide sufficient information for those less familiar with the policy area to understand the changes being made. For example, we asked for the EMs to two sets of regulations on fisheries, the Sea Fisheries (Amendment etc.) Regulations 2021 (SI 2021/698) and the Sea Fisheries (Amendment etc.) (No. 2) Regulations 2021(SI 2021/1429), to be replaced,³⁹ because Defra had failed to explain the technical terms used or to provide sufficient context in the EMs. Similarly, we asked BEIS to revise the EM to the draft Contracts for Difference (Miscellaneous Amendments) Regulations 2022. We found that the EM used technical jargon and failed to explain some of the key concepts or technologies underpinning the instrument, so that it was difficult to understand for a lay reader what the proposed changes would mean in practice.⁴⁰
43. **An EM should set out the case for an instrument’s underlying policy and describe its intended effect in a way that can be understood by a lay reader. It should provide Parliament, those affected by changes in the law and the wider public with a clear and accessible, stand-alone, comprehensive explanation, and it should not be necessary for the reader to conduct extensive research or consult a range of other documents in order to achieve an understanding of what an instrument does. This is particularly important where a policy area is complex and technical.**

The availability and appropriate use of guidance

44. In our *Government by Diktat* report, we highlighted the issue about the blurring between guidance and legislation, and how the guidance or legislation would be enforced. Session 2021–22 provided several examples where we raised concerns about guidance. In our report on the draft Genetically Modified Organisms (Deliberate Release) (Amendment) (England) Regulations 2022, which removed a regulatory burden for research and development trials

37 [Draft Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) \(No. 2\) Regulations 2021](#). See SLSC, [21st Report](#) (Session 2021–22, HL Paper 109).

38 SLSC, [26th Report](#) (Session 2021–22, HL Paper 146).

39 SLSC, [Sixth Report](#) (Session 2021–22, HL Paper 28), and [25th Report](#) (Session 2019–21, HL Paper 137).

40 SLSC, [37th Report](#) (Session 2021–22, HL Paper 197).

involving certain genetically modified plants,⁴¹ we noted that the guidance, which is intended to clarify what type of plants will qualify for the lighter regulatory approach, had not yet been published. We found Defra at fault because numerous concerns had been raised during consultation about the lack of clarity.

45. We similarly noted that the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, which made it mandatory for anyone working in a care home to be fully vaccinated against coronavirus,⁴² lacked key definitions. They were not set out in the instrument or even outlined in the EM. In oral evidence to the Committee, the Minister, the Rt Hon. Mr Zahawi MP, told us that this information would be set out in forthcoming operational guidance. We concluded, however, that this information was crucial to the understanding of how the policy underlying the regulations would work, and that, without it, effective parliamentary scrutiny was impossible.
46. Our report on an order relating to the release of gamebirds, the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 (SI 2021/548), highlighted an apparent inconsistency between the provisions in the SI which made it an offence to allow certain gamebirds to escape into protected areas in England, and the statutory guidance which stated that any activity “must not encourage the released birds to inhabit or occupy” an adjacent protected area.⁴³ We concluded that the statutory guidance appeared to offer a more realistic approach to the challenges of trying to prevent the movement of gamebirds in the wild, but that the mismatch and lack of clarity could create problems for both the enforcement authorities and those releasing the gamebirds.
47. **Where guidance is important to understanding how an instrument will operate in practice, it should be published when the instrument is laid before Parliament. And it should, of course, align fully with the legislation it supports. Key definitions or criteria that will be used in making decisions on how the legislation will operate in practice should be in the legislation itself. These matters are fundamental to effective parliamentary scrutiny, and we expect, therefore, that departmental Senior Responsible Owners will take responsibility for ensuring they are dealt with appropriately.**

41 SLSC, [29th Report](#) (Session 2021–22, HL Paper 156).

42 [Draft Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) \(Coronavirus\) Regulations 2021](#). See SLSC, [8th Report](#) (Session 2019–21, HL Paper 40) and SLSC, [10th Report](#) (Session 2021–22, HL Paper 50).

43 SLSC, [2nd Report](#) (Session 2021–22, HL Paper 7).

PART 2: ACTIVITY DURING SESSION 2021–22

Overview

48. In session 2021–22, we met 36 times and published 38 reports (including this one). We considered 666 instruments,⁴⁴ of which 192 (29%) were subject to the affirmative procedure and 474 (71%) to the negative procedure.⁴⁵ While the proportion of affirmative instruments was lower than in the last session (33%), it still remained well above the average 20% we would expect in a normal year. We also considered 27 proposed negative instruments and published drafts, as part of our pre-legislative scrutiny function under the European (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020 (see paragraphs 56 to 59 below).

Instruments drawn to the special attention of the House

49. Of the 666 SIs considered, we drew 38 (5.7%) to the special attention of the House. (This was below our annual average of about 7% but may be accounted for in part by the comments we made in a separate section of our weekly report on pandemic-related SIs; under normal circumstances, we would have drawn some of these SIs to the special attention of the House due to their policy significance or impact.) Of the 38 instruments:
- 28 (74% of all reported SIs) were reported on the **ground of policy interest**, although some these reports also incorporated questions about the implementation of the policy or its cost. (9 instruments (24% of all SIs reported) were from DfT which has had a challenging year in terms of its programme of secondary legislation.)
 - 10 instruments (26% of all reported SIs) were reported on the **ground of inadequate explanation**, with two of those also having been reported on the additional ground that they may imperfectly achieve their policy objective: the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England) (No. 2) Order 2021 (SI 2021/548)⁴⁶ and the Universal Credit and Jobseeker’s Allowance (Work Search and Work Availability Requirements - limitations) (Amendment) Regulations 2022 (SI 2022/108).⁴⁷
 - The proportion of instruments reported for their poor explanation (26%) was greater than in previous sessions: it compares to 8% in session 2019–21, and 7% in session 2017–19. The relevant SIs were laid by different departments, and most were unrelated to the pandemic. Our critical reports on these instruments therefore underpin the conclusions about the quality of the material presented for scrutiny set out in Part 1 above.

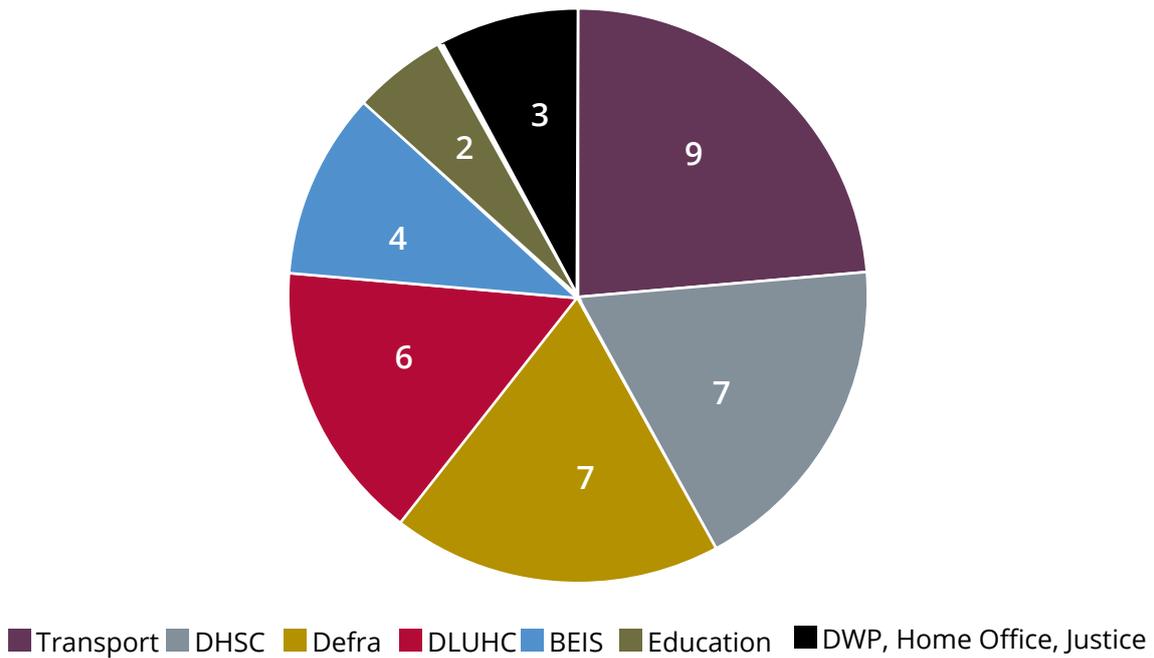
44 As well as SIs, we consider almost all secondary legislation subject to parliamentary procedure, for example, statutory Codes of Practice or Immigration Rules, but the term “SIs” is used in this report as shorthand for all the secondary legislation within our remit.

45 An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion, or ‘prayer’, to reject it is agreed by either House within 40 sitting days.

46 SLSC, [2nd Report](#) (Session 2021–22, HL Paper 7).

47 SLSC, [33rd Report](#) (Session 2021–22, HL Paper 176).

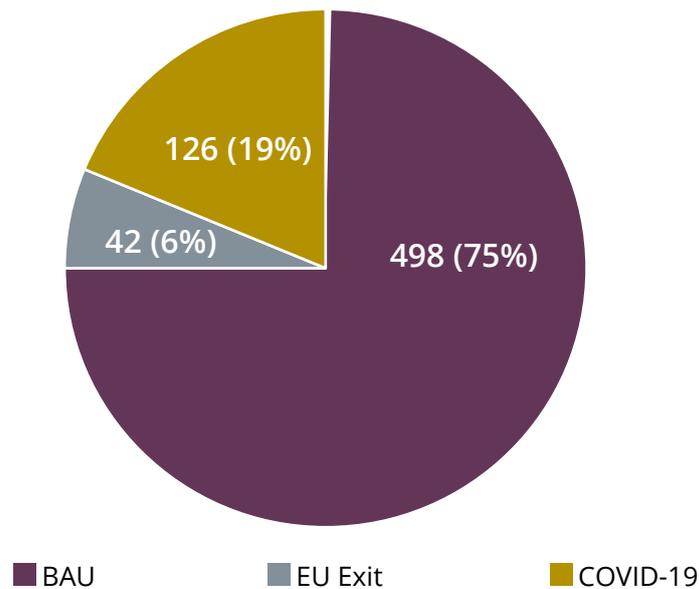
Chart 1: Reported instruments by department



Strands of activity

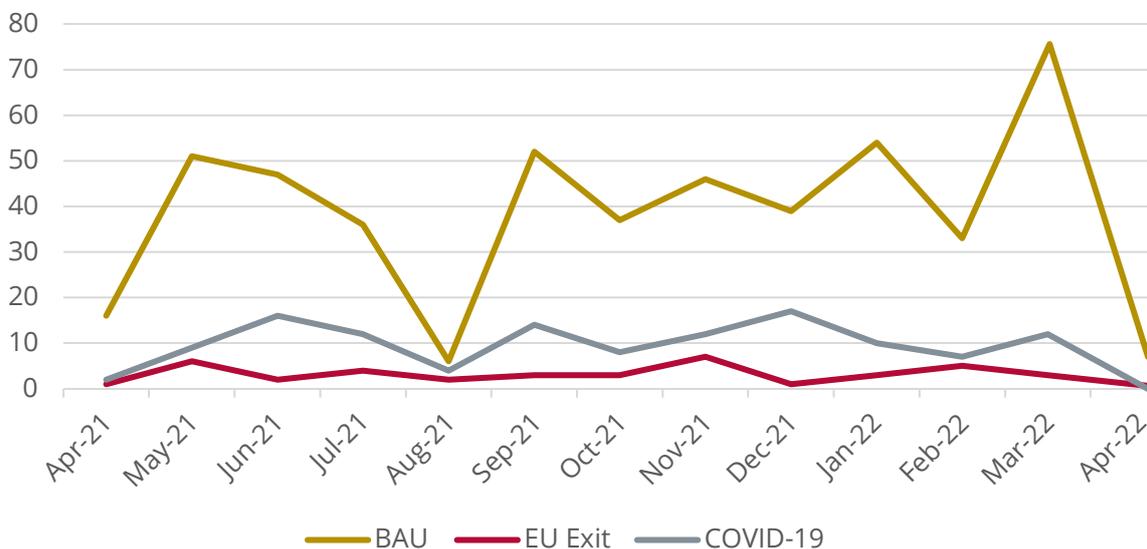
50. The levels of activity in the three main strands of secondary legislation have changed significantly since our last end of session report: (1) EU Exit legislation is now mainly corrections and updates; (2) COVID-19 legislation decreased by two-thirds as pandemic restrictions were lifted; and (3) “business as usual” (BAU) activities now dominate. Chart 2 shows the proportion of these three strands over the session.

Chart 2: Total SIs for the session 2021–22



51. Chart 3 shows the flow of the different types of instruments over the session, and the way that pandemic SIs began to decline from the first quarter of 2022.

Chart 3: BAU v EU Exit v Covid-19 SIs for session 2021–22



Information paragraphs

52. As well as reporting instruments to the House under our terms of reference,⁴⁸ we also offer a sort of “news service”. To that end, we published 126 information paragraphs in session 2021–22 on 154 instruments which were topical, followed an unusual procedure or related to a bill in progress.
53. Continuing the practice established at the start of the pandemic, we also published an information paragraph on every SI relating to COVID-19, irrespective of its significance (in addition to those to which we drew the special attention of the House). We published 119 information paragraphs on 126 instruments relating to COVID-19 (49% of the total number of 245 information paragraphs that we published in this session). Many of these information paragraphs included clarifications or additional information that we obtained from departments.

Use of “coronavirus” in the title of statutory instruments

54. In session 2019–21, we commented that the Government were inconsistent in their use of the word “coronavirus” in the title of pandemic-related instruments. When listing SIs on the part of our website that deals with such legislation,⁴⁹ we are guided by the content of an instrument rather than the title. In our last end of session report, we found that approximately 15% of those SIs listed did not have the word “coronavirus” in their title. This has continued in the current session, so that a simple search of SIs with “coronavirus” in the title would not provide a list of all the relevant legislation. We take the view that it would have been helpful and more transparent for the

48 SLSC, ‘Terms of Reference’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/content/120278/toref> [accessed 27 April 2022].

49 SLSC, ‘Scrutiny of secondary legislation laid to tackle coronavirus pandemic’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/115532/scrutiny-of-secondary-legislation-laid-to-tackle-coronavirus-pandemic/> [accessed 27 April 2022].

Government to use “coronavirus” in the title of all instruments that were laid to deal with the pandemic—this would have provided a more comprehensive picture of the wide range of measures needed to address the many challenges arising from the pandemic.

Table 1: Instruments considered and reported by Department in Session 2021–22

Department	Total laid	%	Affirmative SI reported	Negative SI reported	Reason for report ⁵⁰					
					a	b	c	d	e	f
Attorney General’s Office	1	0.15	0	0	0	0	0	0	0	0
Department for Business, Energy & industrial Strategy	65	9.76	3	1	4	0	0	0	0	0
Cabinet Office	9	1.35	0	0	0	0	0	0	0	0
Department for Digital, Culture, Media & Sport	13	1.95	0	0	0	0	0	0	0	0
Ministry of Defence	3	0.45	0	0	0	0	0	0	0	0
Department for Environment, Food & Rural Affairs	58	8.71	3	4	6	0	1	1	0	0
Department for International Trade	2	0.30	0	0	0	0	0	0	0	0
Department for Work & Pensions*	62	9.31	0	1	0	0	1	1	0	0
Department for Education	33	4.95	0	2	2	0	0	0	0	0
Foreign, Commonwealth & Development Office**	21	3.15	0	0	0	0	0	0	0	0
Government Equalities Office	0	0.00	0	0	0	0	0	0	0	0

50 Our grounds for reporting, as set out in our Terms of Reference, are: (a) that the instrument is politically or legally important or gives rise to issues of public policy likely to be of interest to the House; (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act; (c) that it may imperfectly achieve its policy objectives; (d) that the explanatory material is insufficient; (e) that the consultation process was inadequate; and (f) that the instrument deals inappropriately with deficiencies in retained EU law. See: SLSC, ‘Terms of Reference’, <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/content/120278/toref> [accessed 26 April 2022].

Department of Health & Social Care***	87	13.06	4	3	4	0	0	3	0	0
Home Office	52	7.81	0	1	0	0	0	1	0	0
Ministry of Justice	37	5.56	0	1	1	0	0	0	0	0
Local Government Boundary Commission for England	21	3.15	0	0	0	0	0	0	0	0
Department for Levelling Up, Housing & Communities****	52	7.81	0	6	5	0	0	1	0	0
Northern Ireland Office	4	0.60	0	0	0	0	0	0	0	0
Privy Council	0	0.00	0	0	0	0	0	0	0	0
Scotland Office	11	1.65	0	0	0	0	0	0	0	0
Department for Transport	75	11.26	3	6	6	0	0	3	0	0
HM Treasury*****	60	9.01	0	0	0	0	0	0	0	0
Wales Office	0	0.00	0	0	0	0	0	0	0	0
Total	666		13	25	28	0	2	10	0	0

* Includes Health and Safety Executive.

** Previously the Foreign and Commonwealth Office.

*** Includes Food Standards Agency.

**** Previously the Ministry of Housing, Communities and Local Government.

***** Includes HM Revenue & Customs.

Volume and flow

55. The departments which laid the largest numbers of instruments in session 2021–22 were DHSC with 87 instruments (13% of all SIs), DfT with 75 SIs (11%), and the Department for Business, Energy and Industrial Strategy (BEIS) with 65 SIs (10%). These three departments accounted for a third of all instruments laid (see Table 1 above). While the Government's system of filtering all SIs through its Parliamentary Business and Legislation Committee helped to manage the flow of instruments during this challenging session, there were some peaks and troughs of activity.

Chart 4: SIs laid by Month session 2021–22

Pre-legislative scrutiny of instruments dealing with Brexit

56. Following the UK’s withdrawal from the EU, we have been providing a sifting function in the House of Lords for Proposed Negatives (PNs) laid under the European Union (Withdrawal) Act 2018 (“the 2018 Act”). The volume of PNs has reduced significantly, however, and we considered only 15 PNs of this type during this session: we agreed that the negative procedure was appropriate for all of them and so made no recommendations to upgrade to the affirmative procedure.
57. A similar PN sifting procedure was introduced under the European Union (Future Relationship) Act 2020 (EUFRA). This is intended to be used to implement the Trade and Cooperation Agreement, the Nuclear Cooperation Agreement, the Security of Classified Information Agreement or any relevant agreement with the EU. We received our first EUFRA PN just before the end of the session. Although its intent was a simple correction, there were legal concerns about whether the negative procedure was appropriate in the circumstances.⁵¹
58. An additional procedure that came into use during this session is the “published draft” mechanism under paragraph 14 of Schedule 8 to the 2018 Act. This applies to instruments that amend or revoke secondary legislation made under section 2(2) of the European Communities Act 1972. (Most Directives were transposed into domestic law under that Act.) Published drafts are subject to a two-stage scrutiny process:
- First, the proposed instrument must be published as a draft for at least 28 days to allow for comment, whether by a committee of either House or any other organisation or individual.
 - Second, the instrument is laid formally before Parliament as an affirmative instrument but must include a “scrutiny statement” setting out, amongst other things, the Government’s response to any

51 [Draft Goods Vehicles \(Licensing of Operators\) \(Amendment\) \(No. 2\) Regulations 2022](#). See SLSC, [32nd Report \(Session 2021–22, HL Paper 171\)](#).

representations made. Unlike PNs, these published drafts can change between the first and second stage.

59. In the House of Lords, the SLSC has been charged with responsibility for the scrutiny of all published drafts, and we set out the way we intended to approach the scrutiny of published drafts in a report.⁵² So far, we have seen 11 published drafts, most of which were laid by DfT. We cleared most published drafts without comment, but in three cases we asked for certain points to be made clearer in the EM when the instrument was laid before Parliament.

Corrections

60. We are disappointed that there was no improvement in the level of corrections in this session: correction rates of 9.6% (64) of all SIs scrutinised and 5.6% (37) of all EMs mirror closely the figures in the end of session report for 2019–21 (9.7% and 5.7% respectively). We understand that some of this can be attributed to the pressure of legislating at speed during a public health emergency over an extended period, but **now that the pandemic restrictions have been lifted, we look forward to a marked improvement in the level of corrections.**

Table 2: Number of corrections in session 2021–22

SIs	No. laid	SIs replaced by correction	EMs replaced by correction
Affirmative	192	18 (9.4%)	11 (5.7%)
Negative	474	46 (9.7%)	26 (5.5%)
Total	666	64 (9.6%)	37 (5.6%)

61. In this session we saw a considerable number of errors that could have been avoided easily with more effective quality assurance processes. We note with particular concern the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2022 (SI 2022/229)⁵³ which had to be laid because the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2022 (SI 2022/214) failed to include a commencement date, and the M271 Motorway (Junction 1 to Redbridge Roundabout) (Fixed Speed Limits) (Amendment) Regulations 2022 (SI 2022/202) which were laid due to an error in the previous instrument and moved the application of a speed limit by 55 metres because it was cheaper to change the legislation than to move the road signs.
62. We also note that one instrument was laid before Parliament with the same title as an earlier SI in the same year, using just a different SI number.⁵⁴ This was in breach of the Government's own guidance⁵⁵ and has the potential

52 SLSC, [3rd Report](#) (Session 2021–22, HL Paper 10).

53 Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2022 ([SI 2022/229](#)).

54 The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021 ([SI 2021/422](#)) and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021 (SI 2021/1395), later renamed the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) (No. 2) Regulations 2021 ([SI 2021/1395](#)).

55 The National Archives, *Statutory Instrument Practice*, (November 2017) para 3.9.2: https://www.legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf [accessed 26 April 2022].

to cause confusion. We also saw administrative errors leading to the wrong coming into force date being used for an instrument,⁵⁶ so that the instrument unintentionally breached the 21-day rule. While these may be purely technical errors, the implications are serious in that time and resources, within departments and in Parliament, have to be spent correcting them.

63. In relation to sifting function, six of the 15 PNs laid under the 2018 Act had to be laid more than once due to errors such as omitting the coming into force date or using inconsistent titles for the PN throughout the accompanying EM.
64. **Administrative errors highlight the importance of effective oversight and quality assurance processes within departments. We look to departmental Senior Responsible Owners and Lead Ministers for secondary legislation to ensure that all departments operate effective quality assurance processes.**

Evidence from external parties

65. Submissions from external organisations or individuals who may be affected by changes introduced through secondary legislation can provide important insights and inform our scrutiny. In session 2021–22, we received 21 external submissions, raising concerns about SIs covering a wide range of policy areas, from vaccinations for NHS and social care staff, to genetically edited plants, the ban on trading ivory, calorie labelling and a new code of practice for private parking operators. The submissions we receive may be published on our website, alongside any response from the relevant department to the points raised.⁵⁷
66. **External submissions remind us how changes made by secondary legislation may well be more than purely technical amendments and can have a very real impact on people’s lives and how businesses operate. This reinforces our view about the importance of such changes being explained clearly and accessibly, and of Parliament being given every opportunity to scrutinise secondary legislation effectively.**

Press coverage

67. Given the significance of some of the policy changes made through secondary legislation, in particular during the pandemic, and our concerns about some of the legislative practices and poor quality of explanatory material outlined in this report, we increased our engagement with the media during this session. This engagement also sought to raise awareness and understanding of the way our Committee and Parliament more generally scrutinise secondary legislation.
68. We put out 17 press releases in the session on a wide range of topics which generated over 140 pieces of coverage with an estimated potential reach of up to 50 million people. This media coverage included, for example, several articles reflecting our concerns about the regulations requiring care home

56 Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022 ([SI 2022/160](#)).

57 SLSC, ‘Scrutiny Evidence’: <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/8/scrutiny-evidence/> [accessed 26 April 2022].

staff⁵⁸ and NHS staff⁵⁹ to be vaccinated against COVID-19.⁶⁰ Our report *Government by Diktat* and the Delegated Powers and Regulatory Reform Committee's parallel report *Democracy Denied?* also resulted in media coverage, including a broadcast piece on Times Radio, 18 online articles and the BBC Radio 4's Law in Action podcast in February 2022.⁶¹ We are grateful to the House of Lords Communications Team which made this increased media engagement possible.

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- 58 SLSC, 'Lords summon Minister to address concerns about proposed vaccination of care home staff as a condition of employment': <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/156531/lords-summon-minister-to-address-concerns-about-proposed-vaccination-of-care-home-staff-as-a-condition-of-employment/> [accessed 26 April 2022].
- 59 SLSC, 'Evidence to support mandatory NHS staff vaccination not good enough says Lords Committee': <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/160088/evidence-to-support-mandatory-nhs-staff-vaccination-not-good-enough-says-lords-committee/> [accessed 26 April 2022].
- 60 See, for example, The Carer, 'What Happens to NHS and Care Home Staff Dismissed Due to Mandatory COVID-19 Vaccination Regulations Which Have Now Been Revoked?': <https://thecareruk.com/what-happens-to-nhs-and-care-home-staff-dismissed-due-to-mandatory-covid-19-vaccination-regulations-which-have-now-been-revoked/> [accessed 26 April 2022].
- 61 BBC Sounds, 'Law in Action': <https://www.bbc.co.uk/sounds/play/m0014wtz> [accessed 26 April 2022] (Listen from 17.46).

CONCLUSION

69. As the pressures of the pandemic eased off, we expected the Government to return to normal legislative practice and diligence when preparing secondary legislation and its supporting material. We were therefore disappointed with the quality of some of the secondary legislation and the supporting material laid in this session.
70. In this report, and the reports we have published throughout the session, we have made several criticisms, including criticisms of points of detail but also more fundamental criticisms that relate to the relationship between Parliament and government. We considered some of these wider concerns in more depth in our report *Government by Diktat* and, as these are concerns about matters of principle that go to the very heart of the relationship between Parliament and government, we will be looking further into these issues in the forthcoming session.
71. One of the major objectives of Brexit was the restoration of parliamentary legislative sovereignty. It is therefore essential that in the so-called Brexit Freedoms Bill and any consequential legislation that objective should be upheld and remain central. According to the Government, the Bill will “make it easier to amend or remove outdated retained EU law” and will “accompany a major cross-government drive to reform, repeal and replace outdated EU law”.⁶² We take the view that, in doing so, the Bill should respect and safeguard Parliament’s fundamental constitutional role in the effective scrutiny of primary and secondary legislation.

62 Prime Minister’s Office, 10 Downing Street, Press Release, *Prime Minister pledges Brexit Freedoms Bill to cut EU red tape on (31 January 2022)*: <https://www.gov.uk/government/news/prime-minister-pledges-brexit-freedoms-bill-to-cut-eu-red-tape> [accessed 26 April 2022].

APPENDIX 1: INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 27 April 2022, Members declared no interests.